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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUMBOLDT BAYKEEPER, a program of
Ecological Rights Foundation, and
ECOLOGICAL RIGHTS FOUNDATION, a
non-profit corporation,

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation, NORTH COAST
RAILROAD AUTHORITY, a state agency,
and CUE VI, LLC, an Alaska limited liability
company,

Defendants.

Civil Case No.: C 06-02560 JSW WDB

**STIPULATED REQUEST TO VACATE
AND CONTINUE PRETRIAL
CONFERENCE AND ASSOCIATED
DATES; ~~PROPOSED~~ ORDER**

Pretrial Conf.: August 18, 2008
Time: 2:00 p.m.
Place: Courtroom 2
Judge: Honorable Jeffrey S. White

1 Plaintiffs Humboldt Baykeeper and Ecological Rights Foundation and Defendants Union
2 Pacific Railroad Company, CUE VI, LLC, and North Coast Railroad Authority (collectively, the
3 “Parties”) file this motion to bring to the Court’s attention a scheduling problem. The Court’s
4 *Guidelines for Trial and Final Pretrial Conference in Civil Bench Cases* requires the parties to serve
5 motions in limine by July 21, 2008, serve oppositions to those motions by July 29, and by August 4
6 file a joint pretrial statement and other documents. However, until the Parties receive the Court’s
7 ruling on the pending cross-motions for summary judgment, directed to all counts of Plaintiffs’ Third
8 Amended Complaint, the Parties cannot know the issues that the Court’s ruling may eliminate for
9 trial, and cannot prepare documents responsive to the Court’s ruling. Submission of pretrial
10 documents prior to the Court’s ruling is likely to be unnecessarily voluminous and may address
11 issues disposed of by the Court’s ruling. The Parties are thus in need of the Court’s ruling on the
12 cross-motions to prepare for trial.
13

14
15 Therefore, pursuant to Civil Local Rules 6-1(b) and 6-2, and this Court’s Civil Standing
16 Order, ¶ 3, the Parties in the above-captioned case hereby stipulate and jointly request that this Court
17 issue an order vacating and continuing the August 18, 2008 Pretrial Conference and associated
18 deadlines.

19 Defendants request that the Court continue the Pretrial Conference until September 2, 2008
20 and oppose continuation of the September 15, 2008 Trial date.

21 Plaintiffs request that the Court continue the Pretrial Conference until a reasonable time after
22 the Court issues its decision on the Parties’ pending motions for summary judgment and set a Case
23 Management Conference for August 18, 2008, or for 10 days after the Court rules on the Parties’
24 respective motions for summary judgment, whichever is sooner, for the purpose of resetting dates
25 and, as necessary, to clarify issues to be tried.
26

27 The parties jointly declare the following in support of this request:
28

1 WHEREAS, the Court's October 15, 2007 Scheduling Order set a Pretrial Conference for
2 August 18, 2008 and a bench Trial date of September 15, 2008; and

3 WHEREAS, commencing on July 21, 2008 and prior to the August 18, 2008 Pretrial
4 Conference, the parties must, *inter alia*, exchange, oppose and file their motions in limine for the
5 Court's decision, submit a Final Pretrial Order for the Court's review, confer regarding trial exhibits
6 and evidence issues, and file for the Court's review their respective Proposed Findings of Fact and
7 Conclusions of Law with separate Trial Briefs; and

8
9 WHEREAS, the Court heard arguments on June 13, 2008 and presently has under submission
10 Plaintiffs' and Defendants' respective motions for summary judgment on all three counts of
11 Plaintiffs' Third Amended Complaint;

12 WHEREAS, the Court's rulings on these pending summary judgment motions may moot
13 and/or narrow claims, issues, evidence, and disputes for trial; and,

14
15 WHEREAS, consequently, the Court's rulings on the pending summary judgment motions
16 may significantly modify the scope, volume, and content of the parties' respective Pretrial
17 Conference filings and motions, as identified above, due to be considered and decided by the Court;
18 and

19 WHEREAS, the Parties believe that it would best serve judicial economy for this Court to
20 issue the requested Order; and

21
22 WHEREAS, the Parties have conferred and determined that the requested Order would be in
23 the agreed best interests of the Parties and have a beneficial effect on the narrowing of issues and the
24 efficient trial of this case; and

25 WHEREAS, the Parties reserve their respective rights to move to limit, exclude and
26 otherwise object to evidence and to withdraw, modify, and otherwise address such existing motions
27 and objections as warranted by any orders of this Court; and
28

1 WHEREAS, the Parties have sought three previous modifications to the deadlines in this
2 case and the Court upon its own motion has modified the deadlines twice, including continuing the
3 hearing date for the Parties' summary judgment motions to June 13, 2008;

4 WHEREFORE Plaintiffs and Defendants hereby jointly request that the Court issue an order
5 vacating and continuing the August 18, 2008 Pretrial Conference and associated deadlines.

6
7 Defendants request that the Court continue the Pretrial Conference until September 2, 2008
8 and oppose continuation of the September 15, 2008 Trial date.

9 Plaintiffs request that the Court continue the Pretrial Conference until a reasonable time after
10 the Court issues its decision on the Parties' pending motions for summary judgment and set a Case
11 Management Conference for August 18, 2008, or for 10 days after the Court rules on the Parties'
12 respective motions for summary judgment, whichever is sooner, for the purpose of resetting dates
13 and, as necessary, to clarify issues to be tried.

14
15 Dated: July 16, 2008

Respectfully submitted,

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Dated: July 16, 2008

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Dated: July 17, 2008

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ATTESTATION

I, Jeffrey K. Lee, am counsel for Plaintiffs and the registered ECF user whose username and password are being used to file this Stipulated Request to Vacate and Continue Pretrial Conference and Associated Dates and [Proposed] Order. In compliance with General Order 45 X.B, I hereby attest that the above-identified counsel for Defendants concurred in this filing.

Dated: July 17, 2008

Respectfully submitted,

By: /s/ Jeffrey K. Lee

PROPOSED ORDER

After consideration of the Parties' Stipulated Request to Vacate and Continue Pretrial Conference and Associated Dates and for good cause appearing:

PURSUANT TO STIPULATION, IT IS SO ORDERED that the Court (1) vacates and continues the August 18, 2008 Pretrial Conference and associated deadlines; (2) resets the Pretrial Conference for _____ at _____ a.m./p.m. and vacated the trial date. The Court will reset these dates, if necessary, in its order resolving the parties' cross-motions for summary judgment.

Dated: July 18, 2008


JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE